

No. 16858

United States
Court of Appeals
for the Ninth Circuit

JAYBEE MANUFACTURING CORPORATION,
Appellant,

vs.

AJAX HARDWARE MANUFACTURING COR-
PORATION, Appellee.

Transcript of Record

Appeal from the United States District Court for the
Southern District of California,
Central Division

FILED

JUN 14 1960

FRANK H. SCHMID, CLERK

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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For Appellant:

FLAM AND FLAM,
FREDERICK FLAM,
JOHN FLAM,

2978 Wilshire Boulevard,
Los Angeles 5, California.

For Appellee:

In the United States District Court, Southern
District of California, Central Division

Civil Action No. 316-59 WB

AJAX HARDWARE MANUFACTURING COR-
PORATION, Plaintiff,

vs.

JAYBEE MANUFACTURING CORPORATION,
Defendant.

COMPLAINT FOR INFRINGEMENT OF
UNITED STATES LETTERS PATENT
Des. No. 182,602

Now comes the plaintiff and for its cause of
action avers:

I.

This action arises under the patent laws of the
United States of America U.S.C. Title 35, as
amended, as hereinafter more fully appears.

II.

Plaintiff, Ajax Hardware Manufacturing Corpo-
ration, is a corporation organized and existing un-
der the laws of the State of California and having
its principal place of business at 4351 Valley Boule-
vard, Los Angeles 32, California. [2]

III.

Defendant, Jaybee Manufacturing Corporation, is a corporation organized and existing under the laws of the State of California, and having its principal place of business at 566 North San Fernando Road, Los Angeles, California.

IV.

On April 22, 1958, United States Letters Patent Des. No. 182,602 was duly issued for a term of fourteen years to plaintiff Ajax Hardware Manufacturing Corporation for a design for a handle or similar article by virtue of mesne assignment from the applicant Newton S. Leichter, and ever since said date said plaintiff has been and now is the owner of said Letters Patent. Profert of said Letters Patent is hereby made.

V.

Since the issuance of said Letters Patent Des. No. 182,602, and within six years last past, the defendant, as plaintiff is informed and believes and therefore avers, has been and still is infringing said Letters Patent Des. No. 182,602, in the Southern District of California, and elsewhere, during the term of said Letters Patent, without the license of plaintiff, by causing the design secured by such design patent, or a colorable imitation thereof, to be applied to handles or similar articles for the purpose of sale, and selling or exposing for sale, or causing to be sold or exposed for sale, handles or similar articles to which such design or a color-

able imitation thereof, without the license of plaintiff, has been applied, and will continue to do so unless enjoined by this Court, and has derived unlawful gains and profits [3] from such infringing acts which plaintiff would otherwise have received, and defendant has by such infringement caused damage to plaintiff which will be irreparable unless defendant is enjoined from further infringement of said Letters Patent Des. No. 182,602.

VI.

Plaintiff has caused the required statutory notice to be placed on handles or similar articles manufactured and sold under said Letters Patent Des. No. 182,602.

VII.

Plaintiff has built up a substantial business in the manufacture and sale of handles or similar articles made in accordance with and embodying the invention of said Letters Patent Des. No. 182,602. Said handle or similar article has been recognized by the public as a marked advance in the art. It quickly became popular and in great demand, which popularity and demand have been continuous to date. Plaintiff is informed and believes that the defendant did not independently create the infringing design, but copied the commercial product of plaintiff embodying the invention of that patent.

VIII.

The infringement by the defendant has been deliberate, willful and intentional and has irreparably injured the plaintiff. [4]

Wherefore, plaintiff respectfully prays judgment against the defendant as follows:

1. For a preliminary and final injunction against further infringement by defendant and those controlled by defendant.

2. For damages sustained by plaintiff by reason of said defendant's infringement.

3. That the damages be trebled in view of the deliberate, willful and intentional infringement.

4. For the total amount of the profits made by the defendant on account of said infringement.

5. For the minimum amount of \$250.00 for said infringement.

6. For attorneys' fees.

7. For plaintiff's costs and disbursements herein.

8. For such other and further relief as may appear just and equitable.

AJAX HARDWARE MANU-
FACTURING CORPORATION,

/s/ By NORMAN D. LOUIS,
President,
Plaintiff.

HUEBNER & WORREL,
HERBERT A. HUEBNER,
GEORGE H. HALBERT,
ALBERT L. GABRIEL,

/s/ By GEORGE H. HALBERT,
Attorneys for Plaintiff. [5]

Duly Verified. [6]

[Endorsed]: Filed April 7, 1959.

[Title of District Court and Cause.]

ANSWER

Comes now Jaybee Manufacturing Corporation and for answer to the complaint of plaintiff alleges as follows:

I.

Answering paragraphs I, II, III and IV of said complaint, defendant admits the allegations thereof but traverses the legal conclusion that Design Patent No. 182,602 was duly or otherwise properly issued.

II.

Defendant denies each and every allegation of paragraphs V, VI, VII and VIII.

Affirmative Defenses

III.

Further answering said complaint, defendant alleges that said Design Patent No. 182,602 is invalid, particularly if construed sufficiently broadly to include any article manufactured or sold by defendant for each and [8] every one of the following reasons, among others:

A. The United States Patent Office Examiner in charge of the application that resulted in said patent erred in allowing said application because the subject matter thereof did not involve invention but only the skill of workers versed in the arts of design.

B. Newton S. Leichter was not the inventor of the subject matter of said application.

C. Before the alleged invention thereof by the said Leichter, the alleged invention was known or used by others in this country or patented or described in printed publication, identified as follows:

“Polynesian Artifacts”, Second Edition, published in Wellington, New Zealand in the year 1953 by The Polynesian Society, Inc.

“Furniture for Modern Interiors” by Mario Dal Fabbro, published in 1954 by Reinhold Publishing Corporation of New York, New York.

Catalog of Faultless Furniture Hardware, division of Faultless Caster Corporation of Evansville, Indiana.

And other publications and patents, the numbers, dates and names of which are at present unknown to defendant, but which numbers, dates and names, the said defendant prays leave to insert in this answer by amendment thereof when ascertained.

D. More than one year prior to the date of said application for patent, the invention was patented, or described in a printed publication or in public use or on sale in this country as follows:

“Polynesian Artifacts”, Second Edition, published in Wellington, New Zealand in the year 1953 by the Polynesian Society, Inc.

“Furniture for Modern Interiors” by Mario Dal Fabbro, published in 1954 by Reinhold Publishing Corporation of New York, New York.

Catalog of Faultless Furniture Hardware, division of [9] Faultless Caster Corporation of Evansville, Indiana.

And other publications and patents, the numbers, dates and names of which are at present unknown to defendant, but which numbers, dates and names, the said defendant prays leave to insert in this answer by amendment thereof when ascertained.

E. The alleged invention was described in patents granted on applications for patents and others, filed in the United States before the alleged invention thereof by the said Leichter, the exact numbers, dates and names of which are at present unknown to defendant, but which numbers, dates and names, the said defendant prays leave to insert in this answer by amendment thereof when ascertained.

IV.

Defendant alleges that no article manufactured or sold by it infringes said Design Patent No. 182,602, and that no article manufactured or sold by it appropriates the design shown in said Design Patent No. 182,602.

Counterclaim for Declaratory Judgment

Comes now Jaybee Manufacturing Corporation, and for counterclaim against plaintiff alleges as follows:

I.

Defendant, Jaybee Manufacturing Corporation, is a corporation organized and existing under the laws

of the State of California, and having its principal place of business at 566 San Fernando Road, Los Angeles 65, California.

II.

Plaintiff, Ajax Hardware Manufacturing Corporation, is a corporation organized and existing under the laws of the State of California and having its principal place of business at 4351 Valley Boulevard, Los Angeles 32, California. [10]

III.

This is a counterclaim for declaratory relief; and the jurisdiction of this court depends upon Section 2201 and 2202 of Chapter 151 of Title 28 of the United States Code; an actual controversy between defendant, Jaybee Manufacturing Corporation, and plaintiff, Ajax Hardware Manufacturing Corporation, exists as to alleged infringement by defendant of United States Design Patent No. 182,602, issued on April 22, 1958, and which plaintiff is alleged to be the owner.

IV.

Defendant is in the business of manufacturing and selling hardware throughout the United States, and defendant has at substantial cost and expense built up a valuable goodwill in connection with its business. Plaintiff has issued notices to the trade and to customers of defendant that the said plaintiff intends to prosecute the customers of defendant under said Design Patent No. 182,602 because of

resale by said customers of goods manufactured and sold by defendant, whereas the goods manufactured and sold by defendant are not infringements of said Design Patent No. 182,602.

V.

At no time has defendant or its customers infringed said Design Patent No. 182,602.

VI.

Said United States Design Patent No. 182,602, issued April 22, 1958 is invalid, particularly if construed sufficiently broadly to include any article manufactured or sold by defendant for each and every one of the following reasons, among others:

A. The United States Patent Office Examiner in charge of the application that resulted in said patent erred in allowing said application because the subject matter thereof did not involve invention but only the skill of workers versed in the arts of design.

B. Newton S. Leichter was not the inventor of the subject matter of said application.

C. Before the alleged invention thereof by the said Leichter, the alleged invention was known or used by others in this country or patented or [11] described in printed publications, identified as follows:

“Polynesian Artifacts”, Second Edition, published in Wellington, New Zealand in the year 1953 by the Polynesian Society, Inc.

“Furniture for Modern Interiors” by Mario Dal Fabbro, published in 1954 by Reinhold Publishing Corporation of New York, New York.

Catalog of Faultless Furniture Hardware, division of Faultless Caster Corporation of Evansville, Indiana.

And other publications and patents, the numbers, dates and names of which are at present unknown to defendant, but which numbers, dates and names, the said defendant prays leave to insert in this answer by amendment thereof when ascertained.

D. More than one year prior to the date of said application for patent, the invention was patented, or described in a printed publication or in public use or on sale in this country as follows:

“Polynesian Artifacts”, Second Edition, published in Wellington, New Zealand in the year 1953 by the Polynesian Society, Inc.

“Furniture for Modern Interiors” by Mario Dal Fabbro, published in 1954 by Reinhold Publishing Corporation of New York, New York.

Catalog of Faultless Furniture Hardware, division of Faultless Caster Corporation of Evansville, Indiana.

And other publications and patents, the numbers, dates and names of which are at present unknown to defendant, but which numbers, dates and names, the said defendant prays leave to insert in this answer by amendment thereof when ascertained.

E. The alleged invention was described in patents granted on applications for patents and others, filed in the United States before the alleged inven-

tion thereof by the said Leichter, the exact numbers, dates and names of which are at present unknown to defendant, but which numbers, dates and names, [12] the said defendant prays leave to insert in this answer by amendment thereof when ascertained.

Wherefore defendant prays:

- a. That the complaint be dismissed.
- b. That this court declare the rights of defendant and plaintiff as to the controversy set forth in this counterclaim.
- c. That this court declare that articles manufactured and sold by defendant and alleged by plaintiff to infringe said Design Patent No. 182,602 do not infringe said patent.
- d. That this court declare that Design Patent No. 182,602 is invalid.
- e. That this court grant a preliminary and final injunction enjoining and restraining plaintiff, its officers, agents, servants, employees and attorneys, and those in active concert or participating with it from asserting, contending, claiming or alleging that said Design Patent No. 182,602 is or ever was infringed by defendant, Jaybee Manufacturing Corporation, or its customers, on account of the manufacture and sale by said defendant, or by the resale by its customers of the accused articles.
- f. That this court restrain plaintiff during the pendency of this action from circularizing, writing, or any other manner contacting the trade or customers of defendant, Jaybee Manufacturing Corpo-

ration, with respect to said Design Patent No. 182,602.

g. That the court adjudge and decree that defendant shall have costs of suit incurred, reasonable attorneys' fees, and other relief as the court may seem proper under the circumstances.

FLAM AND FLAM,
FREDERICK FLAM,
/s/ By FREDERICK FLAM,
Attorneys for Defendant. [13]

Duly Verified. [14]

Affidavit of Service by Mail Attached. [15]

[Endorsed]: Filed May 18, 1959.

[Title of District Court and Cause.]

ANSWER TO COUNTERCLAIM

Comes now the plaintiff and answers the counterclaim set forth in the Answer of the defendant as follows:

1.

Plaintiff admits the allegations contained in Paragraph I of said counterclaim.

2.

Plaintiff admits the allegations contained in Paragraph II of said counterclaim.

3.

Plaintiff admits the allegations contained in Paragraph III of said counterclaim.

4.

Plaintiff admits that defendant is in the business of manufacturing and selling hardware throughout the United States: plaintiff having no information or belief upon the allegations set forth [16] in Paragraph IV of said counterclaim that defendant has at substantial cost and expense built up a valuable goodwill in connection with its business sufficient to enable it to answer said allegations, denies the same; plaintiff admits that it has issued notices to two customers of defendant as alleged in said Paragraph IV; and except as herein specifically admitted, plaintiff denies each and every allegation of said Paragraph IV.

5.

Plaintiff denies each and every allegation contained in Paragraph V of said counterclaim.

6.

Plaintiff denies each and every allegation contained in Paragraph VI of said counterclaim.

Wherefore, plaintiff respectfully renews the prayer set forth in its complaint herein, and fur-

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ther prays that defendant's counterclaim be dismissed, with costs and attorneys' fees.

Dated, Los Angeles, California, June 1, 1959.

HUEBNER & WORREL,
HERBERT A. HUEBNER,
GEORGE H. HALBERT,
ALBERT L. GABRIEL,
/s/ By GEORGE H. HALBERT,
Attorneys for Plaintiff. [17]

Duly Verified. [18]

Affidavit of Service by Mail Attached. [19]

[Endorsed]: Filed June 4, 1959.

MEMORANDUM FROM
JUDGE FRED KUNZEL

Los Angeles

California

January 13, 1960

To: Huebner & Worrel
George N. Halbert, Esq.
610 South Broadway
Los Angeles 14, California
Flam & Flam
Frederick Flam, Esq. and
John Flam, Esq.
2978 Wilshire Boulevard
Los Angeles, California

Re: Civil No. 316-59-K
Ajax Hardware Manufacturing Corporation
vs. Jaybee Manufacturing Corporation

Gentlemen:

As was announced at the conclusion of the trial in the above-entitled action, I did not feel that there was a serious question on infringement. It is my view that the alleged infringing drawer pull did not closely resemble the patented pull.

The question of the validity of the design patent presents a much closer question from two standpoints—whether the design was anticipated by prior art and whether Leichter was the sole inventor, however, I will find that the patent is valid and that Leichter was the inventor.

Conclusions of Law and Judgment filed by the plaintiff herein, on each of the following grounds:

1. The Findings of Fact proposed by plaintiff reveal no understanding or analysis of the evidence, and they fail to penetrate beneath the ultimate conclusions of fact. The Findings of Fact as proposed by plaintiff are based upon the pleadings and not upon the evidence. [21]

2. The Findings of Fact proposed by plaintiff are indefinite.

3. The Findings of Fact proposed by plaintiff are inadequate in that they contain no finding as to the allegation of willfulness, no finding as to the allegation of issuance of threats to defendant's customers, no finding of fact as to prior art, no finding of fact as to infringement.

4. Plaintiff's proposed Finding No. 4 is inaccurate as to the question of commercial success.

5. Plaintiff's proposed Finding No. 7 is improper in that proper marking is a question of law; plaintiff's proposed finding is defective for failure to set forth specifically the facts upon which such legal conclusion might be based.

6. Plaintiff's proposed Finding No. 8 is improper in that the conclusion of invention by the named inventor is one of law; plaintiff's proposed Finding No. 8 is defective in that it fails to set forth facts upon which a legal conclusion might be based.

7. The Conclusions of Law proposed by plaintiff are inadequate in that they fail to present the

legal conclusions as to the defenses raised by defendant, and that they fail to decide the questions raised in defendant's counterclaim, and particularly in that they fail to indicate that defendant is entitled to a declaration of rights under §2201 of Title 28 of the United States Code, and to a judgment and injunction on its counterclaim pursuant to §2202 of Title 28 of the United States Code.

8. The Judgment proposed by plaintiff is defective and inadequate in that it fails to give costs of suit to the defendant, which is the prevailing party.

9. The Judgment proposed by plaintiff is defective because it fails to dismiss the plaintiff's complaint.

10. The Judgment proposed by plaintiff is defective because it erroneously and improperly dismisses the defendant's counterclaim which is good and valid. [22]

11. The Findings of Fact, Conclusions of Law and Judgment proposed by plaintiff are inadequate, defective and improper, particularly for lack of conformance to the Findings of Fact, Conclusions of Law and Judgment proposed by defendant, a copy of which is appended hereto.

January 21, 1960.

FLAM AND FLAM,
/s/ By FREDERICK FLAM,

Attorneys for Defendant. [23]

[Title of District Court and Cause.]

FINDINGS OF FACT, CONCLUSIONS OF
LAW AND JUDGMENT

This cause having come on for trial upon the merits, and evidence having been introduced, and the cause having been submitted to the Court, and the Court having rendered its decision therein,

Now, Therefore, the Court makes the following Findings of Fact and Conclusions of Law: [24]

Findings of Fact

1. Plaintiff, Ajax Hardware Manufacturing Corporation, is a California corporation having a principal place of business in Los Angeles, California, and is the owner by assignment of United States Letters Patent No. Des. 182,602, issued to it by the Patent Office on April 22, 1958.

2. Defendant, Jaybee Manufacturing Corporation, is a California corporation, also having its principal place of business in Los Angeles, California.

3. The patent in suit is for a design for a handle or similar article, and the application was made by Newton S. Leichter, an industrial designer of Los Angeles, California, on July 15, 1957.

4. Since April 22, 1958, defendant has manufactured and sold in this District, and without a license from plaintiff, a pull designated as its No. 567, and exemplified by Exhibit 4.

5. Plaintiff's only witness in support of its case in chief was Norman D. Louis, the president and managing officer of the plaintiff. This witness testified, without the aid of documentary corroboration, that 1959 sales of pulls made in accordance with the patent, and as exemplified by plaintiff's Exhibits 2 or 2-A, amounted to approximately four hundred thousand (400,000) pieces. Yet this was not shown to be unusual for plaintiff's business, nor was it shown that the patented pull obsoleted others. Commercial success was not shown.

6. Norman D. Louis testified that pulls corresponding to Exhibit 2 have been continuously sold by plaintiff from about October of 1957. Exhibit 2 corresponds to the pull illustrated in the patent in suit. Mr. Louis testified that the item was marked with the patent number, as shown by Exhibit 2, some time around May or June of 1958.

7. In support of its allegation that defendant willfully infringed the patent in suit, Mr. Louis testified to a conversation with defendant's sales manager at a Chicago trade show in the latter part of 1958, advising the sales manager that he was "asking for trouble" by bringing out a [25] close copy of plaintiff's pull, reference also having been made to an existing patent or to a pending application. There was no further evidence in support of any allegation of willfulness. The record shows no formal notice of infringement prior to the filing of the present suit. There is no basis for a charge of willfulness, the question of infringement notwithstanding.

8. Defendant, in support of its defense that Newton S. Leichter was not the inventor of the design shown in the patent in suit, read into the evidence a portion of the deposition of Newton S. Leichter, the parties having agreed that the marshal, on behalf of defendant, was unable to serve Mr. Leichter with a subpoena for attendance as a witness at the trial. Defendant also produced Dean Winston Myers of Newport Beach, California, in support of this defense. Trial in the matter was continued until Mr. Leichter could be produced on behalf of plaintiff, and he was produced for plaintiff's rebuttal.

Pursuant to a contract between Newton S. Leichter and Ajax Hardware Manufacturing Corporation (defendant's Exhibit S-1), Leichter hired Myers on an hourly basis to produce sketches for submission to Ajax Hardware Manufacturing Corporation. Myers was instructed by Leichter to produce, in addition to a V-pull (not involved in this controversy), an elongated, bar-type pull of modern design and further characterized by the provision of a "cut-out" or hole so that the background or finish of the cabinet could show through. Without further material supervision, Myers produced, among others, the sketch, Exhibit S-17. While there are certain minor differences between the pull illustrated in the patent and the pull illustrated in Exhibit S-17, the pull illustrated in the patent directly evolved from the sketch, Exhibit S-17.

9. In support of its alternate defense of invalid-

ity, in view of the prior art, defendant relied upon the following items which are prior art:

A. Bassick-Sack pull No. 9453.

B. Bassick-Sack pull No. 9471.

C. Bassick-Sack pull No. 9459. [26]

D. Jaybee pull No. 555.

E-3. Jaybee pull No. 573.

F. Faultless pull No. 941.

F-1. Faultless catalogue of September 15, 1956, and pages 5 and 10 thereof.

F-3. Interiors magazine for December, 1954, and page 116; Whitney Publications, Inc., 18 East 50th Street, New York 22, New York.

G. Faultless pull No. 960.

H. Faultless pull No. 1042.

I. Furniture for Modern Interiors by Mario Del Fabbro, page 98; 8 Reinhold Publishing Corporation, New York City, 1954.

J. Photocopy, plate 23, and typewritten copy of the description thereof, from the book *Polynesian Artifacts*, 2nd Edition, published in Wellington, N. Z., by the Polynesian Society, Inc., 1953.

K. Catalogue sheet, the Widdicomb Furniture Company of Grand Rapids, Michigan, No. 2016 Hikie.

M-1. A model of pull of Clayton patent, Exhibit 5.

M-2. A model of pull of Heyer patent, Exhibit 6.

Exhibit H, among others, is closer to the patented design than Exhibits M-1 or M-2, which are models of the pulls shown in the only prior art patents, Exhibits 5 and 6, found by the Examiner. Exhibits

A, B and C show pulls characterized by the provision of one or more holes, and one of them is similar to that of the pull of the patent in suit. The design illustrated in the patent is, nevertheless, with respect to prior art items relied upon by defendant, new, original and ornamental.

10. In support of its defense of non-infringement, defendant produced two witnesses, both persons who, in the normal course of business, purchase door pulls. One witness, Louis Weintraub, is the owner [27] of a hardware business in Los Angeles, California; and the other, Max Bertisch, is a building contractor. The testimony of these witnesses corroborates the conclusions that an ordinary observer, giving such attention as a purchaser usually gives, could not be deceived into purchasing the accused pull, Exhibit 4, believing it to be the pull shown in the patent in suit; that Exhibit 4 can be readily distinguished from the pull shown in the patent; that Exhibit 4 and the pull shown in the patent in suit do not look alike.

11. The accused pull, Exhibit 4, does not infringe United States Letters Patent No. Des. 182,602 or the claim thereof.

12. Plaintiff has admitted that it has issued notices, at least in two instances, to the trade and to customers of defendant to the effect that plaintiff intends to prosecute customers of defendant under Design Patent No. 182,602 because of resale by said customers of goods manufactured by defendant, such notices being Exhibits N-1 and N-2.

On the basis of the foregoing, the Court makes the following

Conclusions of Law

1. This Court has jurisdiction of the parties and of the subject matter.

2. Newton S. Leichter is the sole inventor of the subject matter of United States Letters Patent No. Des. 182,602.

3. United States Letters Patent No. Des. 182,602 is valid.

4. Plaintiff has complied with the requirements of marking, as prescribed in §287 of Title 35 of the United States Code.

5. The Jaybee pull No. 567 and exemplified by Exhibit 4, manufactured and sold by the defendant, does not infringe said United States Letters Patent No. Des. 182,602 or the claim thereof.

6. The prior art relied upon by defendant does not support defendant's contention of invalidity, particularly in the light of the presumption of validity of §282 of Title 35 of the United States Code. [28]

7. The evidence produced by the defendant in support of its defense that the said Newton S. Leichter was not the sole inventor of the subject matter of the patent in suit is inadequate as a matter of law, and particularly in view of the presumption of validity of §282 of Title 35 of the United States Code.

8. Plaintiff is entitled to take nothing by its complaint.

9. Plaintiff having issued threats of suit to defendant's customers, defendant is entitled to an

injunction enjoining and restraining plaintiff, its officers, agents, servants, employees and attorneys and those in active concert or participating with it from asserting, contending, claiming or alleging that said Design Patent No. 182,602 is or ever was infringed by defendant, Jaybee Manufacturing Corporation, or its customers on account of the manufacture and sale by said defendant or the resale by its customers of the accused articles.

10. Defendant is entitled to costs of suit.

11. Defendant is entitled to a declaration of rights between the parties.

Judgment

In accordance with the foregoing Findings of Fact and Conclusions of Law, it is Ordered, Adjudged and Decreed:

1. That United States Letters Patent No. Des. 182,602, issued on April 22, 1958, to the plaintiff, Ajax Hardware Manufacturing Corporation, assignee of Newton S. Leichter, for a term of fourteen years for a design for a handle or similar article, is valid, and said Newton S. Leichter is the original, first and sole inventor of said design.

2. That the drawer pull manufactured and sold by the defendant, Jaybee Manufacturing Corporation, and designated by it as its No. 567, does not infringe said United States Letters Patent No. Des. 182,602.

3. That the complaint is dismissed with prejudice.

4. That a final injunction shall be issued enjoining and [29] restraining Ajax Hardware Manufac-

turing Corporation, its officers, agents, servants, employees and attorneys and those in active concert or participating with it, from asserting, contending, claiming or alleging that United States Letters Patent No. Des. 182,602 is or ever was infringed by Jaybee Manufacturing Corporation or its customers on account of the manufacture or sale by said Jaybee Manufacturing Corporation or the resale by its customers of articles identified as Jaybee Pull No. 567.

5. That defendant shall have and recover from plaintiff its costs in this action in the sum of \$. to be taxed by the Clerk.

Dated at Los Angeles, California, this day of January, 1960.

.....
United States District Judge.

Approved as to form:

FLAM AND FLAM,
By FREDERICK FLAM,
Attorneys for Defendant.
HUEBNER & WORREL,
HERBERT A. HUEBNER,
GEORGE H. HALBERT,
HARLAN P. HUEBNER,

By
Attorneys for Plaintiff.

Proof of Service by Mail Attached. [34]

[Endorsed]: Filed January 22, 1960.

San Diego
California
February 12, 1960

Huebner & Worrel
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George H. Halbert, Esq.
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610 South Broadway
Los Angeles, 14, California

Flam and Flam
Frederick Flam, Esq.
2978 Wilshire Boulevard
Los Angeles 5, California

Re: Civil No. 316-59-K. Ajax Hardware Mfg. Co.
vs. Jaybee Manufacturing Co.

Gentlemen:

After having considered the findings of fact submitted in the above-entitled matter by each of the parties and objections thereto, I have rewritten the findings of fact, conclusions of law and judgment, copy of which is enclosed.

Sincerely,

FRED KUNZEL,
U. S. District Judge.

Enc. [35]

4. Plaintiff, in accordance with the teachings of said United States Letters Patent Des. No. 182,602, has manufactured and sold a handle or similar article which it designates as its Number 547 Drawer Pull, and has achieved commercial success therein.

5. Defendant is a California corporation having its principal place of business in the Southern District of California, Central Division.

6. Since the issuance to plaintiff of said United States Letters Patent Des. No. 182,602, within six years last past, and within the term of said Letters Patent, defendant has manufactured and sold in the Southern District of California and elsewhere, without license of plaintiff, a handle or similar article which it designates as its Number 567 Drawer Pull.

7. That the said drawer pull manufactured and sold by the defendant Jaybee Manufacturing Corporation designated by its No. 567 does not infringe said United States Letters Patent Des. No. 182,602.

8. That the allegations of defendant's counterclaim are not true with the exception that plaintiff issued certain notices to customers of the defendant that its Drawer Pull No. 567 infringed the patent owned by plaintiff designated as United States Letters Patent Des. No. 182,602.

From the foregoing findings of fact the Court makes the following:

Conclusions of Law

1. This Court has jurisdiction hereof by virtue of the provisions of Title 35 of the United States

Code, as amended, and Title 28, Sections 1338, 2201 and 2202, and [37] this Court has jurisdiction of both parties hereto.

2. United States Letters Patent Des. No. 182,602 is valid.

3. The drawer pull No. 567 manufactured and sold by the defendant does not infringe said United States Letters Patent Des. No. 182,602. or the claim thereof.

4. That defendant is entitled to no relief under the allegations of its counterclaim.

In accordance with the foregoing findings of fact and conclusions of law the Court makes the following:

Judgment

It Is Ordered, Adjudged and Decreed:

1. That plaintiff take nothing by reason of its complaint.

2. That defendant take nothing by reason of its counterclaim.

3. That defendant have and recover its cost of suit in the amount of \$297.13.

Dated: At San Diego, California, this 12th day of February, 1960.

/s/ FRED KUNZEL,
United States District Judge.

[Endorsed]: Filed February 12, 1960. Entered February 16, 1960.

United States District Court, Southern District
of California

Office of the Clerk

Room 231, U. S. Post Office & Court House
Los Angeles-12, California

George H. Halbert, Esq.
610 South Broadway
Los Angeles 14, Calif.

Flam & Flam, Esq.
2978 Wilshire Blvd.
Los Angeles 5, Calif.

Re: Ajax Hardware Mfg. Co. vs. Jaybee Mfg.
Corp., No. 316-59-K.

You are hereby notified that judgment in the
above-entitled case was entered this day Feb. 16,
1960 in the docket.

I hereby certify that this notice was mailed on
Feb. 16, 1960.

CLERK, U. S. DISTRICT COURT,
/s/ By C. A. SIMMONS,
Deputy Clerk. [39]

[Title of District Court and Cause.]

NOTICE OF APPEAL TO
COURT OF APPEALS

Notice is hereby given that Jaybee Manufacturing Corporation, defendant above named, hereby appeals to the United States Court of Appeals for the Ninth Circuit from that portion of the Judgment entered February 16, 1960, as follows: "It Is Ordered, Adjudged and Decreed: * * * 2. That defendant take nothing by reason of its counterclaim.", and from that portion of the Findings of Fact, Conclusions of Law and Judgment entered February 16, 1960, which find, conclude or adjudge that United States Letters Patent No. Des. 182,602 is valid.

Dated this 17th day of March, 1960.

FLAM AND FLAM,
/s/ By FREDERICK FLAM,
Attorneys for Appellant, Jaybee Manufacturing
Corporation. [40]

[Endorsed]: Filed March 17, 1960.

[Title of District Court and Cause.]

STATEMENT ON POINTS ON APPEAL
UNDER RULE 75(d)

The points on which defendant-appellant, Jaybee Manufacturing Corporation, intends to rely on this appeal are as follows:

1. The District Court, hereinafter referred to as the "Court", erred in finding that United States Letters Patent No. Des. 182,602 was duly issued to plaintiff, as set forth in Finding of Fact No. 2.

2. Except for the exception therein noted, the Court erred in finding that the allegations of defendant's Counterclaim are not true, and as set forth in Finding of Fact No. 8.

3. The Court erred in concluding that United States Letters Patent No. Des. 182,602 is valid and as set forth in Conclusion of Law No. 2.

4. The Court erred in concluding that defendant is entitled to no relief under the allegations of its Counterclaim, and as set forth in Conclusion of Law No. 4. [46]

5. The Court erred in holding that the defendant take nothing by reason of its Counterclaim, and as set forth in Item 2 of the Court's Judgment.

March 28, 1960.

FLAM AND FLAM,

/s/ By FREDERICK FLAM,

Attorneys for Defendant-Appellant, Jaybee Manufacturing Corporation. [47]

Proof of Service by Mail Attached. [48]

[Endorsed]: Filed March 29, 1960.

[Title of District Court and Cause.]

CERTIFICATE BY THE CLERK

I, John A. Childress, Clerk of the above-entitled Court, hereby certify that the foregoing documents together with the other items, all of which are listed below, constitute the transcript of record on appeal to the United States Court of Appeals for the Ninth Circuit, in the above-entitled case; and that said items are the originals unless otherwise shown on this list:

Page:

1. Names and Addresses of Attorneys.
2. Complaint, filed 4/7/59.
8. Answer and Counterclaim, filed 5/18/59.
16. Answer to Counterclaim, filed 6/4/59.
20. (Copy) Memorandum to Counsel from Judge Fred Kunzel, dated 1/13/60.
21. Defendant's Objections to proposed Findings of Fact, Conclusions of Law and Judgment, filed 1/22/60.
35. (Copy) Letter dated 2/12/60 from Fred Kunzel, U. S. District Judge.
36. Findings of Fact, Conclusions of Law and Judgment, filed 2/12/60 and entered 2/16/60.
39. (Copy) Clerk's notice of entry of judgment, dated 2/16/60.
40. Notice of Appeal, filed 3/17/60.
41. Designation of contents of record on appeal, filed 3/29/60.
46. Statement on Points on appeal, filed 3/29/60.

Two volumes of Reporter's Transcript of Proceedings had on: December 15 and 16, 1959; January 11, 1960.

Plaintiff's Exhibits 1, 5 and 6.

Defendant's Exhibits A, A-1, B, C, D, E-3, F, F-1, F-2, G, H, I, K, M, M-1, M-2, N-1, N-2, P-1, P-2, P-3, P-4 and T.

Dated: April 12, 1960.

[Seal] JOHN A. CHILDRESS,
 Clerk,
 /s/ By WM. A. WHITE,
 Deputy Clerk.

[Title of District Court and Cause.]

REPORTER'S TRANSCRIPT OF
PROCEEDINGS

Los Angeles, California
Tuesday, December 15, 1959

Honorable Fred Kunzel, Judge Presiding. [1]*

Appearances: For the Plaintiff and Cross-Defendant: Huebner & Worrell, By: George N. Halbert, Esq., 610 South Broadway, Los Angeles 14, California. For the Defendant and Cross-Plaintiff: Flam & Flam, By: Frederick Flam, Esq., and John Flam, Esq., 2978 Wilshire Boulevard, Los Angeles 5, California. [2]

* * * * *

* Page numbers appearing at top of page of Reporter's Transcript of Record.

Mr. Halbert: * * * I offer in evidence a copy of the patent in suit, which is design patent No. 182,602, issued April 22, 1958, in the name of Newton S. Leichter, assignor to Ajax Hardware Manufacturing Corporation, the plaintiff in this case.

The Court: It may be received and marked—

The Clerk: Plaintiff's Exhibit 1, your Honor.

(The document referred to was marked Plaintiff's Exhibit 1, and received in evidence. [6])

* * * * *

Mr. Halbert: I offer in evidence a copy of design patent No. 169,257 to Heyer, which has been lodged as Plaintiff's Exhibit No. 5, and is one of the references cited in Plaintiff's Exhibit No. 1.

The Court: It may be received.

The Clerk: Plaintiff's 5 admitted.

(The exhibit heretofore marked Plaintiff's Exhibit 5 was received in evidence.)

Mr. Halbert: I offer in evidence a copy of design patent No. 180,684 to Clayton, which was lodged as Plaintiff's Exhibit No. 6, and which is the other reference cited in Plaintiff's Exhibit No. 1.

The Court: It may be received.

The Clerk: Plaintiff's Exhibit 6 admitted.

(The exhibit heretofore marked Plaintiff's Exhibit 6 was received in evidence.) [35]

* * * * *

NORMAN D. LOUIS

called as a witness on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows: [26]

* * * * *

Cross Examination * * * * *

Mr. Frederick Flam: I would like to refer the witness to Exhibits A and B appended to Notice of Motion for Preliminary Injunction, filed May 29, 1959.

(The documents were placed before the witness.)

The Witness: Yes.

Q. (By Mr. Frederick Flam): Now, did you write those letters? A. Yes, I did.

Q. All right. Then you know how to write a letter of infringement, do you not?

A. Well, thanks for the compliment. All I wrote and told them was that I wanted them to know they were buying the Jaybee pull instead of our pull, when we came out with it, and, therefore, I wanted them to know that we were going to file suit, or we did file suit. I haven't read the letter actually over.

Q. Did you get any help in composing this letter? [54]

A. No, I did not. I may have talked it over with George, with Mr. Halbert, but I don't know that I actually worded it. I just wrote a letter.

Q. I would like to ask you this further: Are you a member of the Bar of this State?

(Testimony of Norman D. Louis.)

A. Yes.

Mr. Frederick Flam: All right. I would like to offer in evidence the letters, Exhibits A and B, which are appended to this document, as Exhibits N-1 and N-2.

Mr. Halbert: May I ask whether they have been lodged?

Mr. Frederick Flam: They have been identified, I believe, in the pretrial order. They were a part of the original records.

The Court: Yes, they were.

Mr. Halbert: Without objection——

The Court: They were referred to, I believe, in the pretrial order.

Mr. Halbert: Without objection, if they were.

The Court: They may be received.

The Clerk: N-1 and N-2 admitted.

(The documents referred to were marked Defendant's Exhibits N-1 and N-2, and received in evidence.) [55]

* * * * *

Mr. Frederick Flam: At this time, your Honor, I would like to offer in evidence requests for admissions, and answers. There are two sets, comprising four documents, respectively, a document filed July 27, 1959, which comprises within it Request for Admissions; a document filed August 28, 1959, comprising Responses to Request for Admissions; a document filed September 21, 1959, entitled Request for Supplemental Admissions, and a document, dated September 28, 1959, entitled Plain-

tiff's Response to Second Supplemental Request for Admissions as Defendant's Exhibits P-1, P-2, P-3 and P-4.

The Court: They may be received.

(The documents referred to were marked Defendant's Exhibits P-1, P-2, P-3 and P-4, and received in evidence.) [56]

* * * * *

Mr. Frederick Flam: All right. Now, I would like to offer Exhibits A, B, C, F, G and H, the pulls identified.

Mr. Halbert: No objection.

The Court: They may be received.

The Clerk: Exhibits A, B, C, F, G and H admitted.

(The exhibits heretofore marked Defendant's Exhibits A, B, C, F, G and H, were received in evidence.) [62]

* * * * *

Mr. Frederick Flam: I wish to offer that in evidence, and draw particular attention to page 98, in the lower left-hand corner.

Mr. Halbert: What page?

Mr. Frederick Flam: 98.

Mr. Halbert: Thank you.

Mr. Frederick Flam: As Exhibit I.

The Court: It may be received.

The Clerk: Exhibit I admitted.

(The exhibit referred to was marked Defendant's Exhibit I and received in evidence.)

* * * * *

Mr. Frederick Flam: I offer that as Exhibit K.

The Court: All right. It may be received.

* * * * *

The Clerk: Defendant's Exhibit K admitted.

(The exhibit referred to was marked Defendant's Exhibit K, and received in evidence.) [64]

* * * * *

Mr. Halbert: No objection.

The Court: It may be received.

The Clerk: Exhibit F-1 admitted.

(The exhibit marked Defendant's Exhibit F-1 was received in evidence.) [65]

* * * * *

Mr. Frederick Flam: At this time I would like to offer in evidence as Exhibit A-1 a looseleaf with removable pages entitled "Bassick - Sack Modern Catalog." That is as Exhibit A-1.

Mr. Halbert: May I see it, please?

(The document was handed to counsel.)

Mr. Halbert: No objection.

The Court: It may be received. [66]

The Clerk: Defendant's Exhibit A-1 admitted.

(The exhibit referred to was marked Defendant's Exhibit A-1 and received in evidence.)

Mr. Frederick Flam: I would like to offer at this time as Exhibit F-2 a catalog of Faultless Furniture Hardware.

Mr. Halbert: No objection.

The Court: It may be received.

The Clerk: Defendant's Exhibit F-2 admitted.

(The exhibit referred to was marked Defendant's Exhibit F-2 and received in evidence.)

Mr. Frederick Flam: At this time I would like to offer in evidence a certified file history of this application for patent as Exhibit M.

Mr. Halbert: No objection.

The Court: It may be received.

The Clerk: Exhibit M admitted.

(The exhibit referred to was marked Defendant's Exhibit M, and received in evidence.) [67]

* * * * *

JAKE BORENSTEIN

called as a witness on behalf of the defendant, having been first duly sworn, was examined and testified as follows:

* * * * *

Direct Examination

Q. (By Mr. Frederick Flam): What is your occupation?

A. I am president of the Jaybee Manufacturing Corporation.

Q. The defendant in this case? A. Yes.

Q. Are you active in the management of that corporation? A. Yes.

Q. I will hand you Exhibit D-1 and E-1, for identification. Can you identify these exhibits?

A. These are price lists that we have put out. D-1 was published November 23, 1956, and E-1 was published April 15, 1958.

Q. Do either of these catalogs show the No. 555 pull corresponding with Exhibit E? [77]

A. Catalog E-1 shows the 555 pull on page 17.

(Testimony of Jake Borenstein.)

Mr. Halbert: Your Honor, if we are getting down to whether this 555 pull and the other one that the other witness was talking about were made and sold before ours, we will admit it, and it will save an awful lot of time.

Mr. Frederick Flam: Very well. It was denied vehemently.

The Court: The 555 pull is exhibit what?

Mr. Frederick Flam: Exhibit D.

Mr. Halbert: D.

The Court: D, all right. Let's proceed.

The Clerk: Is there a ruling on D, your Honor?

The Court: It may be received.

The Clerk: Exhibit D admitted.

(The exhibit heretofore marked Defendant's Exhibit D was received in evidence.) [78]

* * * * *

Mr. Frederick Flam: At this time, your Honor, I would like to offer in evidence as examples of the two patented pulls found by the Examiner two exhibits which are appended to this board.

I would like, first of all, to offer in evidence as [100] a sample of the Clayton patent the black pull on the left as Exhibit M-1.

The Court: That may be received.

* * * * *

The Clerk: M-1 admitted.

(The exhibit referred to was marked Defendant's Exhibit M-1 and received in evidence.)

* * * * *

Mr. Frederick Flam: * * * * * I will offer one of the pulls as Exhibit M-2.

* * * * *

The Court: That may be received.

The Clerk: M-2 admitted.

(The exhibit referred to was marked Defendant's Exhibit M-2 and received in evidence.)

Mr. Frederick Flam: I would like to offer at this time as Exhibit T pull No. 1319 made by Faultless Furniture Hardware.

Mr. Halbert: Could I have just a second, your Honor?

(Counsel examines the pull referred to.)

Mr. Halbert: I have no objection.

The Court: It may be received.

The Clerk: T admitted.

(The exhibit referred to was marked Defendant's Exhibit T and received in evidence.) [102]

* * * * *

Mr. Frederick Flam: Also, to clarify the record, in the event there is any doubt about it, I would like to offer at this time, if I have not already, Exhibit E-3 in evidence.

The Court: E-what?

Mr. Frederick Flam: E-3.

Mr. Halbert: No objection.

The Court: It may be received.

(The exhibit heretofore marked Defendant's Exhibit E-3 was received in evidence.) [184]

* * * * *

[Endorsed]: Filed February 2, 1960.

182,602

HANDLE OR SIMILAR ARTICLE

Newton S. Leichter, Los Angeles, Calif., assignor to Ajax Hardware Manufacturing Corp., Los Angeles, Calif., a corporation of California

Application July 15, 1957, Serial No. 46,945

Term of patent 14 years

(Cl. D10—8)

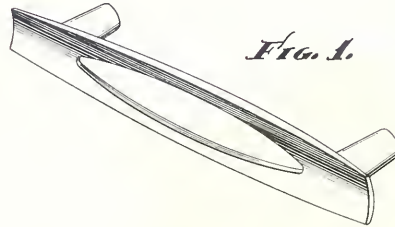


Fig. 1.

Fig. 2.



Fig. 3.



Fig. 4.



Fig. 5.



Figure 1 is a perspective view of the face of a handle showing my new design.

Figure 2 is a face view of the same.

Figure 3 is a top plan view of the handle.

Figure 4 is a rear elevational view of the handle.

Figure 5 is an end elevation of the handle taken from the right of Figure 2.

I claim:

The ornamental design for a handle or similar article, as shown.

References Cited in the file of this patent

UNITED STATES PATENTS

D. 169,257	Heyer	Apr. 7, 1953
D. 180,684	Clayton	July 23, 1957



UNITED STATES PATENT OFFICE

169,257

**PULL FOR DRAWERS, CABINET DOORS, AND
THE LIKE**

Don Heyer, El Monte, Calif.

Application October 10, 1952, Serial No. 21,775

Term of patent 7 years

(Cl. D10-8)

To all whom it may concern:

Be it known that I, Don Heyer, a citizen of the United States and a resident of El Monte, county of Los Angeles, California, have invented a new, original, and ornamental Design for a Pull for Drawers, Cabinet Doors, and the like, of which the following is a specification, reference being had to the accompanying drawing, forming part thereof.

Referring to the drawing:

Fig. 1 is a perspective view of a pull for drawers, cabinet doors, and the like, showing my new design;

Fig. 2 is a perspective view thereof, as seen from the side opposite that shown in Fig. 1;

Fig. 3 is an elevational view looking in the direction of the arrow 3 in Fig. 1;

Fig. 4 is an elevational view looking in the direction of the arrow 4 in Fig. 1; and

Fig. 5 is an elevational view looking in the direction of the arrow 5 in Fig. 1.

I claim:

The ornamental design for a pull for drawers, cabinet doors, and the like, as shown.

DON HEYER.

References Cited in the file of this patent

UNITED STATES PATENTS

Number	Name	Date
D. 130,353	Janes	Nov. 11, 1941
D. 152,198	Hay	Dec. 28, 1948

PULL FOR DRAWERS, CABINET DOORS, AND THE LIKE

Filed Oct. 10, 1952

Fig. 1.

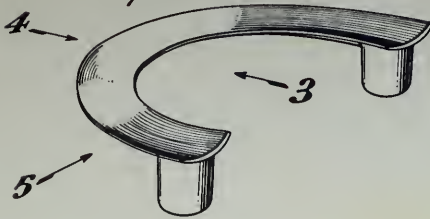


Fig. 2.

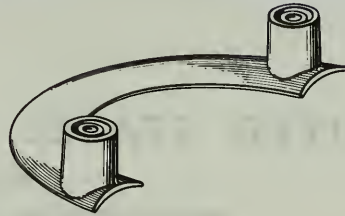


Fig. 3.



Fig. 4.



Fig. 5.



DON HEYER,
INVENTOR.

BY
Paul A. Weicin
ATTORNEY.

180,684

PULL

La Verne E. Clayton, Rockford, Ill., assignor to Amerock Corporation, a corporation of Illinois

Application October 27, 1955, Serial No. 38,595

Term of patent 14 years

(Cl. D10-8)

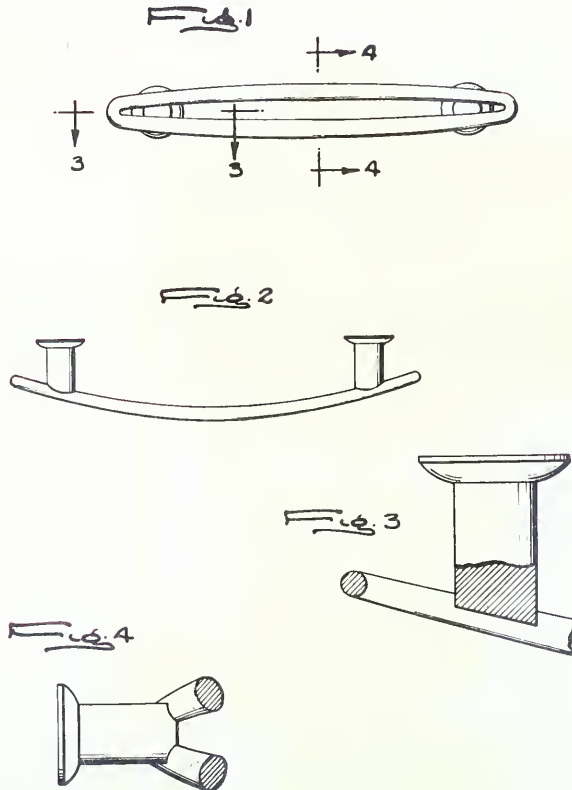


Figure 1 is a front elevation of a pull showing my new design.

Fig. 2 is a plan view.

Fig. 3 is an enlarged sectional view taken along the line 3-3 in Fig. 1.

Fig. 4 is an enlarged sectional view taken along the line 4-4 in Fig. 1.

I claim:

The ornamental design for a pull, substantially as shown.

References Cited in the file of this patent
UNITED STATES PATENTS

D. 98,439 Martin Feb. 4, 1936
D. 169,302 Borchers Apr. 14, 1953

DEFENDANT'S EXHIBIT "N-1"

[Letterhead of Ajax Hardware Manufacturing
Corp., Los Angeles 32, California]

Registered—Return Receipt Requested

April 16, 1959

Crest Hardware Company
9330 W. Pico
Los Angeles, California

Gentlemen:

It has come to our attention that you are selling a product, manufactured by Jaybee Manufacturing Company which is in violation of our Patent #182,602.

This is a design for a Pull that we have originated. We have filed suit in the Federal Courts against Jaybee Manufacturing Company for infringement of our Patent. If you continue to offer for sale and sell this Pull made by Jaybee Manufacturing Company which has been copied after our #547 Pull, you will leave us no alternative but to also include you as a violator of our Patent in our course of protection of our rights in the Federal Courts.

For your identification, it is our understanding that the Pull which Jaybee Manufacturing Com-

Defendant's Exhibit "N-1"—(Continued)

pany manufactures which is similar to our #547
Pull is their #567.

Very truly yours,

AJAX HARDWARE
MANUFACTURING CORP.

/s/ NORMAN LOUIS
Norman D. Louis

NDL:bcf

Admitted in Evidence December 15, 1959.

DEFENDANT'S EXHIBIT "N-2"

[Letterhead of Ajax Hardware Manufacturing
Corp., Los Angeles 32, California]

Registered—Return Receipt Requested

April 16, 1959

Los Angeles Hardware Company
8361 W. 3rd Street
Los Angeles 48, California

Gentlemen:

It has come to our attention that you are selling a product, manufactured by Jaybee Manufacturing Company which is in violation of our Patent #182,602.

This is a design for a Pull that we have originated. We have filed suit in the Federal Courts

Defendant's Exhibit "N-2"—(Continued)
against Jaybee Manufacturing Company for infringement of our Patent. If you continue to offer for sale and sell this Pull made by Jaybee Manufacturing Company which has been copied from our #547 Pull, you will leave us no alternative but to also include you as a violator of our Patent in our course of protection of our rights in the Federal Courts.

For your identification, it is our understanding that the Pull which Jaybee Manufacturing Company manufactures which is similar to our #547 Pull is their #567.

Very truly yours,

AJAX HARDWARE
MANUFACTURING CORP.
NORMAN D. LOUIS

NDL:bef

Admitted in Evidence December 15, 1959.

DEFENDANT'S EXHIBIT "P-2"

[Title of District Court and Cause.]

RESPONSE TO REQUEST FOR ADMISSIONS AND SUPPLEMENTAL ADMISSIONS

Ajax Hardware Manufacturing Corporation, the plaintiff herein (hereinafter sometimes referred to as "Ajax"), makes the following statements in response to the request for admissions and request

Defendant's Exhibit "P-2"—(Continued)

for supplemental admissions heretofore served upon it by the defendant.

Request No. 1: Before the alleged invention of the subject matter of Design Patent No. D-182,602, by Newton S. Leichter, a pull, identified by No. R-960 by its manufacturer, Faultless Furniture Hardware of Evansville, Indiana, was publicly known and publicly used in this country.

Answer: Plaintiff has no knowledge when said pull was publicly known and publicly used in this country, but has used due diligence to obtain such knowledge, and has been advised by said Faultless Furniture Hardware that a pull identified by said Faultless Furniture Hardware as No. R-960 was put into production in the Fall of 1952, and was first shown in the Faultless Furniture Hardware catalog in January 1955.

Request No. 2: More than one year prior to the date of the application for said Design Patent No. D-182,602, a pull identified as R-960 by its manufacturer, Faultless Furniture Hardware of Evansville, Indiana, was on sale in this country.

Answer: Plaintiff has no knowledge when said pull was on sale in this country, but has used due diligence to obtain such knowledge, and has been advised by said Faultless Furniture Hardware that a pull identified by said Faultless Furniture Hardware as No. R-960 was put into production in the Fall of 1952, and was first shown in the Faultless Furniture Hardware catalog in January, 1955.

Request No. 3: Before the alleged invention of the subject matter of Design Patent No. D-182,602,

Defendant's Exhibit "P-2"—(Continued)

by Newton S. Leichter, a pull, identified by No. R-1042 by its manufacturer, Faultless Furniture Hardware of Evansville, Indiana, was publicly known and publicly used in this country.

Answer: Plaintiff has no knowledge as to a pull identified by No. R-1042 by its manufacturer, Faultless Furniture Hardware of Evansville, Indiana, and when, if at all, such a pull was publicly known and publicly used in this country, although plaintiff has used due diligence to obtain such knowledge, and has been advised by said Faultless Furniture Hardware that a pull identified by said Faultless Furniture Hardware as No. R-1042 was put into production in the Fall of 1952, and was first shown in the Faultless Furniture Hardware catalog in January, 1955.

Request No. 4: More than one year prior to the date of the application for said Design Patent No. D-182,602, a pull identified as R-1042 by its manufacturer, Faultless Furniture Hardware of Evansville, Indiana was on sale in this country.

Answer: Plaintiff has no knowledge as to a pull identified by No. R-1042 by its manufacturer, Faultless Furniture Hardware of Evansville, Indiana, and when, if at all, such a pull was on sale in this country, although plaintiff has used due diligence to obtain such knowledge, and has been advised by said Faultless Furniture Hardware that a pull identified by said Faultless Furniture Hardware as No. R-1042 was put into production in the Fall of 1952, and was first shown in the Faultless Furniture Hardware catalog in January, 1955.

Defendant's Exhibit "P-2"—(Continued)

Request No. 5: Before the alleged invention of the subject matter of Design Patent No. D-182,602, by Newton S. Leichter, a pull, identified by No. R-941 by its manufacturer, Faultless Furniture Hardware of Evansville, Indiana was publicly known and publicly used in this country.

Answer: Plaintiff has no knowledge when said pull was publicly known and publicly used in this country, but has used due diligence to obtain such knowledge, and has been advised by said Faultless Furniture Hardware that a pull No. R-941 was designed in 1952; that drawings thereof were made and dated August 14, 1952; and that such a pull was first shown in the catalog of said company, dated January, 1955.

Request No. 6: More than one year prior to the date of the application for said Design Patent No. D-182,602, a pull identified as R-941 by its manufacturer, Faultless Furniture Hardware of Evansville, Indiana, was on sale in this country.

Answer: Plaintiff has no knowledge when said pull was on sale in this country, but has used due diligence to obtain such knowledge, and has been advised by said Faultless Furniture that a pull No. R-941 was designed in 1952; that drawings thereof were made and dated August 14, 1952; and that such a pull was first shown in the catalog of said company, dated January, 1955.

Request No. 7: Before the alleged invention of the subject matter of Design Patent No. D-182,602, by Newton S. Leichter, a pull, identified by No. R-1319 by its manufacturer, Faultless Furniture

Defendant's Exhibit "P-2"—(Continued)

Hardware of Evansville, Indiana was publicly known and publicly used in this country.

Answer: Plaintiff has no knowledge when said pull was publicly known and publicly used in this country, but has used due diligence to obtain such knowledge, and has been advised by said Faultless Furniture Hardware that a Pull No. R-1319 was first shown in a catalog of Faultless Furniture Hardware released in January, 1959, and on the basis of said information plaintiff denies that said Pull No. R-1319 was publicly known and publicly used in this country before the invention of the subject matter of the patent in suit.

Request No. 8: More than one year prior to the date of the application for said Design Patent No. D-182,602, a pull identified as R-1319 by its manufacturer, Faultless Furniture Hardware of Evansville, Indiana was on sale in this country.

Answer: Plaintiff has no knowledge when said pull was on sale in this country, but has used due diligence to obtain such knowledge, and has been advised by said Faultless Furniture Hardware that a pull identified by said Faultless Furniture Hardware as R-1319 was first shown in a catalog of Faultless Furniture Hardware released in January, 1959, and on the basis of said information plaintiff denies that said Pull No. R-1319 was on sale in this country more than one year prior to the date of the application for patent in suit.

Request No. 13: Before the alleged invention of the subject matter of Design Patent No. D-182,602, by Newton S. Leichter, a pull, identified by No.

Defendant's Exhibit "P-2"—(Continued)

DC-9453 by its manufacturer, Bassick-Sack of Winston - Salem, North Carolina, was publicly known and publicly used in this country.

Answer: Plaintiff has no knowledge when said pull was publicly known and publicly used in this country, but has used due diligence to obtain such knowledge, and has been advised by said Bassick-Sack of Winston-Salem, North Carolina, that a pull identified by No. DC-9453 was originally designed in 1952, and sold in 1953.

Request No. 14: More than one year prior to the date of the application for said Design Patent No. D-182,602, a pull, identified as No. DC-9453 by its manufacturer, Bassick-Sack of Winston-Salem, North Carolina, was on sale in this country.

Answer: Plaintiff has no knowledge when said pull was on sale in this country, but has used due diligence to obtain such knowledge, and has been advised by said Bassick-Sack of Winston-Salem, North Carolina, that a pull identified by No. DC-9453 was originally designed in 1952, and sold in 1953.

Request No. 15: Before the alleged invention of the subject matter of Design Patent No. D-182,602, by Newton S. Leichter, a pull, identified by No. DC-9471 by its manufacturer, Bassick-Sack of Winston-Salem, North Carolina, was publicly known and publicly used in this country.

Answer: Plaintiff has no knowledge when said pull was publicly known and publicly used in this country, but has used due diligence to obtain such knowledge, and has been advised by said Bassick-

Defendant's Exhibit "P-2"—(Continued)

Sack that a pull identified by No. DC-9471 was originally designed in 1952 and sold in 1953.

Request No. 16: More than one year prior to the date of the application for Design Patent No. D-182,602, a pull, identified as No. DC-9471 by its manufacturer, Bassick - Sack of Winston - Salem, North Carolina, was on sale in this country.

Answer: Plaintiff has no knowledge when said pull was on sale in this country, but has used due diligence to obtain such knowledge, and has been advised by said Bassick-Sack of Winston-Salem, North Carolina, that a pull identified by No. DC-9471 was originally designed in 1952, and sold in 1953.

Request No. 17: Before the alleged invention of the subject matter of Design Patent No. D-182,602, by Newton S. Leichter, a pull, identified by No. DC-9459 by its manufacturer, Bassick-Sack of Winston-Salem, North Carolina was publicly known and publicly used in this country.

Answer: Plaintiff has no knowledge when said pull was publicly known and publicly used in this country, but has used due diligence to obtain such knowledge, and has been advised by said Bassick-Sack that a pull identified by No. DC-9459 was originally designed in 1952, and sold in 1953.

Request No. 18: More than one year prior to the date of the application for said Design Patent No. D-182,602, a pull, identified as No. DC-9459 by its manufacturer, Bassick - Sack of Winston - Salem, North Carolina was on sale in this country.

Defendant's Exhibit "P-2"—(Continued)

Answer: Plaintiff has no knowledge when said pull was on sale in this country, but has used due diligence to obtain such knowledge, and has been advised by said Bassick-Sack of Winston-Salem, North Carolina, that a pull identified by No. DC-9459 was originally designed in 1952, and sold in 1953.

Request No. 22: A book entitled "Polynesian Artifacts" (Second Edition), the Oldmen Collection, published in Wellington, New Zealand, by the Polynesian Society Inc., in 1953, was received by the Los Angeles Librarian in Los Angeles, California, more than one year prior to the date of the application for patents in the United States by the said Newton S. Leichter.

Answer: Plaintiff denies that said book was received by the Los Angeles Librarian more than one year prior to the date of the application for the patent on which this suit is based.

Request No. 24: Before the alleged invention by Newton S. Leichter of the pull of Patent No. D-182,602, the Witticomb Furniture Company of Grand Rapids, Michigan produced for public use and sale a furniture item identified as No. 2016 Hikie, in this country.

Answer: Plaintiff has no knowledge when said furniture item was first produced for public use and sale, but has used due diligence to obtain such knowledge, and has been advised by said Witticomb Furniture Company of Grand Rapids, Michigan, that a furniture item identified as No. 2016 Hikie,

Defendant's Exhibit "P-2"—(Continued)

was produced by them during the latter part of 1953, and publicly offered for sale in January, 1954.

Request No. 25: More than one year prior to the application for patent in the United States by the said Newton S. Leichter, the Witticomb Furniture Company sold benches identified as No. 2016 Hickie, in the United States.

Answer: Plaintiff has no knowledge when said furniture item was first produced for public use and sale, but has used due diligence to obtain such knowledge, and has been advised by said Witticomb Furniture Company that a furniture item identified as No. 2016 Hickie, was produced by them during the latter part of 1953, and publicly offered for sale in January, 1954.

Request No. 27: Before the alleged invention of the subject matter of Design Patent No. D-182,602, by Newton S. Leichter, a pull identified as No. 555 by Jaybee Manufacturing Corporation, was publicly known and publicly used in this country.

Answer: Plaintiff is unable to admit or deny this request, because the matter is particularly within the knowledge of the defendant and not within the knowledge of the plaintiff.

Request No. 28: More than one year prior to the date of application for said Design Patent No. D-182,602, a pull identified as No. 555 by Jaybee Manufacturing Corporation was on sale in this country.

Answer: Plaintiff is unable to admit or deny this request, because the matter is particularly

Defendant's Exhibit "P-2"—(Continued)

within the knowledge of the defendant and not within the knowledge of the plaintiff.

Request No. 29: A sample of said item No. 555 referred to in Request for Admissions 27 and 28 is located at the office of Flam and Flam, 2978 Wilshire Boulevard, and which will be deposited as defendant's Exhibit D, and which is now available for inspection during business hours at the offices of Flam and Flam on any reasonable advance notice, corresponds to said item No. 555 referred to in Requests for Admissions 27 and 28, as publicly known, publicly used, and on sale as stated in said Requests.

Answer: Plaintiff is unable to admit or deny this request, because the matter is particularly within the knowledge of the defendant and not within the knowledge of the plaintiff.

Request No. 30: Before the alleged invention of the subject matter of Design Patent No. D-182,602, by Newton S. Leichter, a pull identified as No. 573 by Jaybee Manufacturing Corporation, was publicly known and publicly used in this country.

Answer: Plaintiff is unable to admit or deny this request, because the matter is particularly within the knowledge of the defendant and not within the knowledge of the plaintiff.

Request No. 31: The sample of said item No. 573, referred to in Requests for Admissions 30, located at the office of Flam and Flam, 2978 Wilshire Boulevard, and which will be deposited as defendant's Exhibit E, and which is now available for inspection during business hours at the offices

Defendant's Exhibit "P-2"—(Continued)

of Flam and Flam on any reasonable advance notice, corresponds to the item referred to in Requests for Admissions 30, as publicly known, publicly used, and on sale as stated in said Requests.

Answer: Plaintiff is unable to admit or deny this request, because the matter is particularly within the knowledge of the defendant and not within the knowledge of the plaintiff.

AJAX HARDWARE MANUFACTURING CORPORATION,

/s/ By NORMAN D. LOUIS,
President.

State of California

County of Los Angeles—ss.

Personally appeared before me, Norman D. Louis, President of Ajax Hardware Manufacturing Corporation, the plaintiff herein, and says that he has read the foregoing Response to Request for Admissions and Supplemental Admissions, and knows the contents thereof; and that the same are true of his own knowledge, except as to the matters which are therein stated upon his information or belief, and as to those matters he believes it to be true.

Dated: August 25, 1959.

[Seal] /s/ HAZEL Z. SHANNON,
Notary Public in and for Said County and State.

My Commission Expires January 15, 1961.

Admitted in Evidence December 15, 1959.

[Endorsed]: Filed August 28, 1960.

DEFENDANT'S EXHIBIT "P-3"

[Title of District and Cause.]

DEFENDANT'S AND CROSS-PLAINTIFF'S
REQUEST FOR SUPPLEMENTAL AD-
MISSIONS

Pursuant to the provisions of Rule 36 of the Federal Rules of Civil Procedure, and subject to reimbursement for reasonable expenses and attorney's fees, as provided in Rule 37c of the Rules of Civil Procedure, defendant and cross-plaintiff, Jaybee Manufacturing Corporation requests the following supplemental admissions of plaintiff and cross-defendant Ajax Hardware Manufacturing Corporation to be answered within ten (10) days separately and fully under oath, by Norman D. Louis, President of said Ajax Hardware Manufacturing Corporation:

32. Defendant's Exhibit A, lodged herein, exemplifies a pull known by others in this country before the alleged invention of the subject matter of Design Patent No. Des. 182,602 by Newton S. Leichter.

33. Defendant's Exhibit B, lodged herein, exemplifies a pull known by others in this country before the alleged invention of the subject matter of Design Patent No. Des. 182,602 by Newton S. Leichter.

34. Defendant's Exhibit C, lodged herein, exemplifies a pull known by others in this country before the alleged invention of the subject matter

Defendant's Exhibit "P-3"—(Continued)

of Design Patent No. Des. 182,602 by Newton S. Leichter.

* * * * *

37. Defendant's Exhibit F, lodged herein, exemplifies a pull known by others in this country before the alleged invention of the subject matter of Design Patent No. Des. 182,602 by Newton S. Leichter.

38. Defendant's Exhibit G, lodged herein, exemplifies a pull known by others in this country before the alleged invention of the subject matter of Design Patent No. Des. 182,602 by Newton S. Leichter.

39. Defendant's Exhibit H, lodged herein, exemplifies a pull known by others in this country before the alleged invention of the subject matter of Design Patent No. Des. 182,602 by Newton S. Leichter.

* * * * *

64. Defendant's Exhibit I, lodged herein, is a printed publication entitled "Furniture for Modern Interiors" and published more than one year prior to the date of the application for United States Letters Patent No. Des. 182,602 by Newton S. Leichter.

65. Defendant's Exhibit K, lodged herein, is a printed publication of the Widdicomb Furniture Company of Grand Rapids, Michigan and published more than one year prior to the date of the application for United States Letters Patent No. Des. 182,602.

Defendant's Exhibit "P-3"—(Continued)

66. Defendant's Exhibit F-1, lodged herein, is a printed publication of Faultless Caster Corporation, published more than one year prior to the date of the application for United States Letters Patent No. Des. 182,602 by Newton S. Leichter.

67. Defendant's Exhibit F-3, lodged herein, is a printed publication, "Interiors" and published more than one year prior to the date of the application for United States Letters Patent No. Des. 182,602 by Newton S. Leichter.

68. Defendant's Exhibit J, lodged herein, is an accurate reproduction, part photostatic and part printed, of a printed publication entitled "Polynesian Artifacts" published more than one year prior to the date of the application for United States Letters Patent No. Des. 182,602 by Newton S. Leichter.

September 18, 1959.

FLAM and FLAM
/s/ By FREDERICK FLAM
Attorneys for Defendant and
Cross-plaintiff.

Proof of Service by Mail Attached.

Admitted in Evidence December 15, 1959.

[Endorsed]: Filed September 21, 1959.

DEFENDANT'S EXHIBIT "P-4"

[Title of District Court and Cause.]

PLAINTIFF'S RESPONSE TO SECOND SUPPLEMENTAL REQUEST FOR ADMISSIONS

Ajax Hardware Manufacturing Corporation, the plaintiff herein, makes the following statements in response to the second supplemental request for admissions (third request for admissions) heretofore served upon it by the defendant.

Request No. 35

Defendant's Exhibit D, lodged herein, exemplifies a pull known by others in this country before the alleged invention of the subject matter of Design Patent No. Des. 182,602 by Newton S. Leichter.

Answer

Plaintiff is unable to admit or deny this request, because the matter of the defendant's own drawer pull No. 555 is particularly within the knowledge of the defendant and not within the knowledge of the plaintiff.

Request No. 36

Defendant's Exhibit E, lodged herein, exemplifies a pull known by others in this country before the alleged invention of the subject matter of Design Patent No. Des. 182,602 by Newton S. Leichter.

Defendant's Exhibit "P-4"—(Continued)

Answer

Plaintiff is unable to admit or deny this request, because the matter of the defendant's own drawer pull No. 573 is particularly within the knowledge of the defendant and not within the knowledge of the plaintiff.

Request No. 40

Defendant's Exhibit A, lodged herein, exemplifies a pull used by others in this country before the alleged invention of the subject matter of Design No. Des. 182,602 by Newton S. Leichter.

Answer

Plaintiff has no knowledge when, if ever, said drawer pull was used by others in this country, but has used due diligence to obtain such knowledge, and has been advised by Bassick-Sack, of Winston-Salem, N. C., that a pull identified by No. DC-9453 was originally designed in 1952 and sold in 1953.

Request No. 41

Defendant's Exhibit B, lodged herein, exemplifies a pull used by others in this country before the alleged invention of the subject matter of Design Patent No. Des. 182,602 by Newton S. Leichter.

Answer

Plaintiff has no knowledge when, if ever, said drawer pull was used by others in this country, but has used due diligence to obtain such knowledge,

Defendant's Exhibit "P-4"—(Continued)

and has been advised by said Bassick-Sack that a pull identified by No. DC-9471 was originally designed in 1952 and sold in 1953.

Request No. 42

Defendant's Exhibit C, lodged herein, exemplifies a pull used by others in this country before the alleged invention of the subject matter of Design Patent No. Des. 182,602.

Answer

Plaintiff has no knowledge when, if ever, said drawer pull was used by others in this country, but has used due diligence to obtain such knowledge, and has been advised by said Bassick-Sack that a pull identified by No. DC-9459 was originally designed in 1952 and sold in 1953.

Request No. 43

Defendant's Exhibit D, lodged herein, exemplifies a pull used by others in this country before the alleged invention of the subject matter of Design Patent No. Des. 182,602 by Newton S. Leichter.

Answer

Plaintiff is unable to admit or deny this request, because the matter of the defendant's own drawer pull No. 555 is particularly within the knowledge of the defendant and not within the knowledge of the plaintiff, the said exhibit being a drawer pull allegedly manufactured and sold by the defendant.

Defendant's Exhibit "P-4"—(Continued)

Request No. 44

Defendant's Exhibit E, lodged herein, exemplifies a pull used by others in this country before the alleged invention of the subject matter of Design Patent No. Des. 182,602 by Newton S. Leichter.

Answer

Plaintiff is unable to admit or deny this request, because the matter of the defendant's own drawer pull No. 573 is particularly within the knowledge of the defendant and not within the knowledge of the plaintiff, the said exhibit being a drawer pull allegedly manufactured and sold by the defendant.

Request No. 45

Defendant's Exhibit F, lodged herein, exemplifies, a pull used by others in this country before the alleged invention of the subject matter of Design Patent No. Des. 182,602 by Newton S. Leichter.

Answer

Plaintiff has no knowledge when, if ever, said drawer pull was used by others in this country, but has used due diligence to obtain such knowledge, and has been advised by Faultless Furniture Hardware, of Evansville, Indiana, that a pull identified by No. R-941 was designed in 1952; that drawings thereof were made and dated August 14, 1952; and that such a pull was first shown in the catalog of such company, dated January, 1955.

Defendant's Exhibit "P-4"—(Continued)

Request No. 46

Defendant's Exhibit G, lodged herein, exemplifies a pull used by others in this country before the alleged invention of the subject matter of Design Patent No. Des. 182,602 by Newton S. Leichter.

Answer

Plaintiff has no knowledge when, if ever, said drawer pull was used by others in this country, but has used due diligence to obtain such knowledge, and has been advised by said Faultless Furniture Hardware that a pull identified by No. R-960 was put into production in the Fall of 1952 and was first shown in the Faultless Furniture Hardware catalog of January, 1955.

Request No. 47

Defendant's Exhibit H, lodged herein, exemplifies a pull used by others in this country before the alleged invention of the subject matter of Design Patent No. Des. 182,602 by Newton S. Leichter.

Answer

Plaintiff has no knowledge when, if ever, said drawer pull was used by others in this country, but has used due diligence to obtain such knowledge, and has been advised by said Faultless Furniture Hardware that a pull identified by No. R-1042 was put into production in the Fall of 1952 and was first shown in the Faultless Furniture Hardware catalog in January, 1955.

Defendant's Exhibit "P-4"—(Continued)

Request No. 48

Defendant's Exhibit A, lodged herein, exemplifies a pull in public use in this country more than one year prior to the date of the application for United States Letters Patent No. Des. 182,602 by Newton S. Leichter.

Answer

This Request is substantially the same as Request No. 13, previously answered, and said answer applies hereto.

Request No. 49

Defendant's Exhibit B, lodged herein, exemplifies a pull in public use in this country more than one year prior to the date of the application for United States Letters Patent No. Des. 182,602 by Newton S. Leichter.

Answer

This Request is substantially the same as Request No. 15, previously answered, and said answer applies hereto.

Request No. 50

Defendant's Exhibit C, lodged herein, exemplifies a pull in public use in this country more than one year prior to the date of the application for United States Letters Patent No. Des. 182,602 by Newton S. Leichter.

Defendant's Exhibit "P-4"—(Continued)

Answer

This Request is substantially the same as Request No. 17, previously answered, and said answer applies hereto.

Request No. 51

Defendant's Exhibit D, lodged herein, exemplifies a pull in public use in this country more than one year prior to the date of the application for United States Letters Patent No. Des. 182,602 by Newton S. Leichter.

Answer

This Request is substantially the same as Request No. 27, previously answered, and said answer applies hereto.

Request No. 52

Defendant's Exhibit E, lodged herein, exemplifies a pull in public use in this country more than one year prior to the date of the application for United States Letters Patent No. Des. 182,602 by Newton S. Leichter.

Answer

This request is substantially the same as Request No. 30, previously answered, and said answer applies hereto.

Request No. 53

Defendant's Exhibit F, lodged herein, exemplifies a pull in public use in this country more than

Defendant's Exhibit "P-4"—(Continued)
one year prior to the date of the application for
United States Letters Patent No. Des. 182,602 by
Newton S. Leichter.

Answer

This Request is substantially the same as Request
No. 5, previously answered, and said answer ap-
plies hereto.

Request No. 54

Defendant's Exhibit G, lodged herein, exempli-
fies a pull in public use in this country more than
one year prior to the date of the application for
United States Letters Patent No. Des. 182,602 by
Newton S. Leichter.

Answer

This Request is substantially the same as Request
No. 1, previously answered, and said answer ap-
plies hereto.

Request No. 55

Defendant's Exhibit H, lodged herein, exempli-
fies a pull in public use in this country more than
one year prior to the date of the application for
United States Letters Patent No. Des. 182,602 by
Newton S. Leichter.

Answer

This Request is substantially the same as Request
No. 3, previously answered, and said answer applies
hereto.

Defendant's Exhibit "P-4"—(Continued)

Request No. 56

Defendant's Exhibit A, lodged herein, exemplifies a pull on sale in this country more than one year prior to the date of the application for United States Letters Patent No. Des. 182,602 by Newton S. Leichter.

Answer

This Request is substantially the same as Request No. 14, previously answered, and said answer applies hereto.

Request No. 57

Defendant's Exhibit B, lodged herein, exemplifies a pull on sale in this country more than one year prior to the date of the application for United States Letters Patent No. Des. 182,602 by Newton S. Leichter.

Answer

This Request is substantially the same as Request No. 16, previously answered, and said answer applies hereto.

Request No. 58

Defendant's Exhibit C, lodged herein, exemplifies a pull on sale in this country more than one year prior to the date of the application for United States Letters Patent No. Des. 182,602 by Newton S. Leichter.

Answer

This Request is substantially the same as Request No. 18, previously answered, and said answer applies hereto.

Request No. 59

Defendant's Exhibit D, lodged herein, exemplifies a pull on sale in this country more than one year prior to the date of the application for United States Letters Patent No. Des. 182,602 by Newton S. Leichter.

Answer

This Request is substantially the same as Request No. 28, previously answered, and said answer applies hereto.

Request No. 60

Defendant's Exhibit E, lodged herein, exemplifies a pull on sale in this country more than one year prior to the date of the application for United States Letters Patent No. Des. 182,602 by Newton S. Leichter.

Answer

Plaintiff is unable to admit or deny this request because the matter is particularly within the knowledge of the defendant and not within the knowledge of the plaintiff, the subject exhibit being a drawer pull allegedly manufactured and sold by defendant.

Defendant's Exhibit "P-4"—(Continued)

Request No. 61

Defendant's Exhibit F, lodged herein, exemplifies a pull on sale in this country more than one year prior to the date of the application for United States Letters Patent No. Des. 182,602 by Newton S. Leichter.

Answer

This Request is substantially the same as Request No. 6, previously answered, and said answer applies hereto.

Request No. 62

Defendant's Exhibit G, lodged herein, exemplifies a pull on sale in this country more than one year prior to the date of the application for United States Letters Patent No. Des. 182,602 by Newton S. Leichter.

Answer

This Request is substantially the same as Request No. 2, previously answered, and said answer applies hereto.

Request No. 63

Defendant's Exhibit H, lodged herein, exemplifies a pull on sale in this country more than one year prior to the date of the application for United States Letters Patent No. Des. 182,602 by Newton S. Leichter.

Defendant's Exhibit "P-4"—(Continued)

Answer

This Request is substantially the same as Request No. 4, previously answered, and said answer applies hereto.

Request No. 66

Defendant's Exhibit F-1, lodged herein, is a printed publication of Faultless Caster Corporation, published more than one year prior to the date of the application for United States Letters Patent No. Des. 182,602 by Newton S. Leichter.

Answer

If defendant's Exhibit F-1 is a small catalog of Faultless Caster Corporation, and not a large 8½ x 11 catalog having a black, white and red cover, this Request is admitted.

Request No. 68

Defendant's Exhibit J, lodged herein, is an accurate reproduction, part photostatic and part printed, of a printed publication entitled "Polynesian Artifacts" published more than one year prior to the date of the application for United States Letters Patent No. Des. 182,602 by Newton S. Leichter.

Defendant's Exhibit "P-4"—(Continued)

Answer

This Request is admitted, subject to correction in the typewritten part thereof if error should appear.

AJAX HARDWARE MANUFACTURING CORPORATION

/s/ By NORMAN D. LOUIS
President

State of California,
County of Los Angeles—ss.

Personally appeared before me, Norman D. Louis, President of Ajax Hardware Manufacturing Corporation, the plaintiff herein, and says that he has read the foregoing Plaintiff's Response to Second Supplemental Request For Admissions, and knows the contents thereof, and that the same are true of his own knowledge, except as to the matters which are therein stated upon his information or belief, and as to those matters he believes it to be true.

[Seal] /s/ MARTIN L. SKOLL,
Notary Public in and for said County and State.
My Commission Expires April 25, 1960.

Acknowledgment of Service Attached.

Admitted in Evidence December 15, 1959.

[Endorsed]: Filed September 28, 1959.

[Endorsed]: No. 16858. United States Court of Appeals for the Ninth Circuit. Jaybee Manufacturing Corporation, Appellant, vs. Ajax Hardware Manufacturing Corporation, Appellee. Transcript of Record. Appeal from the United States District Court for the Southern District of California, Central Division.

Filed: April 13, 1960.

Docketed: April 15, 1960.

/s/ FRANK H. SCHMID,
Clerk of the United States Court of Appeals for
the Ninth Circuit.

[Letterhead of Flam and Flam.]

April 13, 1960

Mr. Frank H. Schmid,
Clerk, U. S. Court of Appeals
P.O. Box 547
San Francisco 1, California

Re: Ajax Hardware Manufacturing Corporation vs.
Jaybee Hardware Manufacturing Corporation
Civil Action No. 316-59 FK

Dear Sir:

There will be shortly transmitted to you from the District Court for the Southern District of California, Central Division, a record in the above case together with the \$25.00 docket fee.

The record will contain a Statement On Points On Appeal Under Rule 75(d) and a Designation of Contents On Record On Appeal. For purposes of satisfying subdivision 6 of Rule 17, of the Rules of the Court of Appeals, the appellant wishes to adopt the Statement On Points On Appeal Under Rule 75(d) and Designation of Contents On Record On Appeal.

The record will also contain Exhibits 1, 5 and 6 which are soft copies of United States Design patents. The appellant has ordered sixty (60) copies of each of these patents. When received they will be forwarded for use as prescribed by subdivision 7 of Rule 17.

Respectfully,

/s/ FREDERICK FLAM,
FREDERICK FLAM,
For FLAM and FLAM.

FF-c

Certificate of Service by Mail Attached.

[Endorsed]: Filed April 14, 1960. Frank H. Schmid, Clerk.

